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Fish and Game Commission



Sonke Mastrup, Executive Director
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August 28, 2013

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to sections 165 and 165.5, Title 14, California Code of Regulations, relating to the commercial harvest of kelp, which will be published in the California Regulatory Notice Register on August 30, 2013.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Dr. Craig Shuman, Manager of Marine Region, Department of Fish and Wildlife, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachment

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 6653, 6653.5, 6700, and 6701 of the Fish and Game Code and to implement, interpret or make specific sections 6650, 6651, 6652, 6653, 6653.5, 6654, 6656, 6680, 6700, 6701, 6701.5, 6702, 6703, 6704, 6705, 6706, and 6707 of said Code, proposes to amend subsections (a), (b), and (c), of Section 165 and Section 165.5, Title 14, California Code of Regulations, relating to the commercial harvest of kelp.

Informative Digest/Policy Statement Overview

Existing regulations within subsections (a), (b), and (c) of Section 165, and Section 165.5, Title 14, California Code of Regulations (CCR), define procedures for the commercial harvest of kelp, as well as the exclusive right to harvest in leased Administrative Kelp Beds (kelp beds). Existing regulations define kelp bed boundaries by landmarks and compass headings, and reference outdated kelp bed maps. A kelp harvest plan approved by the Fish and Game Commission (Commission) is required only for mechanical harvesters in non-leased kelp beds north of Santa Rosa Creek, San Luis Obispo County, and a detailed development plan is required for approval of kelp bed leases. To improve management and enforceability, the proposed regulation will revise subsections (a), (b), and (c) of Section 165, and Section 165.5 by defining kelp bed boundaries using spatially explicit latitude and longitude coordinates, removing reference to antiquated kelp bed maps, requiring a Commission-approved kelp harvest plan for the mechanical harvest of kelp in all kelp beds where harvesting is allowed, removing the requirement of a Commission-approved development plan for lessees and replacing it with a Commission-approved kelp harvest plan, and specifying required details in and frequency of submittal of harvest plans. The proposed regulations will incorporate by reference the form 2013 Kelp Harvesting License Application (MRD 658 New 7/13) in subsection 165(a)(1). Subsections 165(c)(4) and 165(c)(4)(E) will be repealed. Editorial changes are also proposed to improve clarity and consistency of the regulations.

The proposed regulatory changes will benefit the environment by improving the sustainable management of commercial kelp harvest. In addition, the proposed regulatory changes will provide benefits related to regulation enforceability.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Legislature has delegated authority to the Commission to adopt regulations as may be necessary to insure the proper harvesting of kelp and other aquatic plants, for the leasing of kelp beds, and to prescribe information necessary on kelp lease applications (sections 6653, 6700, and 6701, Fish and Game Code). The proposed regulations are consistent with regulations that restrict or prohibit kelp harvest in marine protected areas (Section 632, Title 14, CCR), commercial herring-eggs-on-kelp regulations (Section 164, Title 14, CCR), and regulations concerning marine facility plans and small marine fueling facility plans (sections 817.02 and 817.03, Title 14, CCR). Commission staff has searched the California Code of Regulations and statutes and has found no other state regulations related to kelp harvesting and no other state agency with authority to promulgate kelp harvest regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Crowne Plaza Ventura Beach Hotel, 450 E. Harbor Blvd., Ventura, California, on Wednesday, October 2, 2013 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Embassy Suites La Quinta Hotel & Spa, 50-777 Santa Rosa Plaza, La Quinta, California, on Wednesday, November 6, 2013 at 8:30 a.m., or as soon thereafter as the matter may be heard.

Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on October 31, 2013.**

All comments must be received no later than November 6, 2013 at the hearing in La Quinta, CA.

If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Dr. Craig Shuman, Marine Region Manager, Department of Fish and Wildlife, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations nominally change the boundaries of the areas available to help harvesters and do not significantly increase harvesting costs.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The proposed changes in boundary descriptions for existing kelp beds are minor clarifications and are unlikely to result in changes to the economics of commercial kelp harvesting. Industry costs associated with preparation of the required kelp harvest plans are minor to inconsequential. For this reason, the proposed regulations are unlikely to result either the creation of new jobs or new businesses, or the elimination of existing jobs or existing businesses, or cause the expansion of existing kelp harvesting operations.

The Commission anticipates some benefits to the health and welfare of California residents or to worker safety. Incidental benefits to health and welfare of Californians may accrue from more detailed and precise lease boundary definitions. This could lead to diminished user conflicts in areas which heretofore may not have been as well identified as the site of industrial activities.

The Commission anticipates benefits to the environment in the improved sustainable management of commercial kelp harvest.

- (c) Cost Impacts on a Representative Private Person or Business:

Some licensed kelp harvesters may incur additional costs ranging from \$80 to \$400 (occurring once every five years) if they plan to use mechanical harvesters in non-leased areas or intend to lease kelp beds. Furthermore, kelp bed lessees that currently have a kelp harvest plan in place would incur additional costs of approximately \$40 to \$200 to amend their harvest plans with the additional required information. However, these costs are considered negligible compared to overall business operating costs, occur only once every five years, and only affect those licensees that desire to use mechanical harvesters in non-leased kelp beds and those kelp bed lessees which must provide additional information in their harvest plans.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: August 16, 2013

Sonke Mastrup
Executive Director